

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Bky. No. 03-47780 (RJK)

Romie Obi Ogbolu, Jr.,

Chapter 13 Case

Debtor.

NOTICE OF HEARING AND MOTION TO CONVERT CASE TO CHAPTER 7

TO: Romie Obi Ogbolu, Jr., the Debtor, and his attorney, Alan J. Albrecht, 7066 Brooklyn Boulevard, Brooklyn Center, MN 55429; and those parties on the attached service list.

1. Dwight R.J. Lindquist, as Trustee in the Chapter 7 case prior to its conversion, and Best & Flanagan LLP, administrative claimant (collectively, the “Movants”), move the Court for the relief requested below and give notice of hearing herewith.

2. The Court will hold a hearing on these motions at 9:30 a.m. on November 3, 2004, in Courtroom 8 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. Because of the expedited nature of this motion, and the limited notice, Movants will not object to any response filed prior to the time and place of hearing. IF NO RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This motion arises under 11 U.S.C. §1307(c) and § 706(a). This motion is filed under Federal Rules of Bankruptcy Procedure 1017(f)(2) and 9014, and Local Rule 1017-2(a).

5. The Debtor filed a voluntary petition in Chapter 7 on November 4, 2003. Dwight R.J. Lindquist was appointed Chapter 7 Trustee. Debtor, through his counsel, Alan J. Albrecht, filed a conversion to Chapter 13 on or about October 26, 2004, one week before a pending hearing to approve sale of the bankruptcy estate's major asset, and almost one year since the Chapter 7 was filed. The case is pending before this Court.

6. At the time the Debtor filed the bankruptcy petition commencing this case, he owned real property in Montgomery County, Maryland, legally described as: "Lots numbered Twenty-One (21) to Twenty-Five (25), both inclusive, in Block lettered "N" of the subdivision of land called "CROYDEN PARK", as the same thereof is recorded in Plat Book No. 3 at Plat 272 among the Land Records of Montgomery County, Maryland" (the "Property"). Debtor acknowledges his ownership in his letter dated October 18 (obviously drafted on or about October 22) filed with the Court. Debtor has also acknowledged his ownership of the property in his answer to the adversary proceeding filed by the Trustee on file with this Court and the Debtor's response to the motion for relief from stay by CitiFinancial, which answer is on file with the Court as docket entry 14 on January 8, 2004.

7. Debtor did not list this Property at the time he filed his schedules pro se, and did not list any of the lien holders on such Property. Debtor has never amended his schedules to provide this information.

8. At the time Debtor filed the Chapter 7 petition, the property in Maryland was leased to Ms. Hazel Kelley, who was paying rent. This lease and the rent being paid were not disclosed by Debtor in his schedules. The rent was property of the bankruptcy estate, and despite demand, the Trustee has never received this rent from the tenant, the Debtor, or his parents to whom the tenant asserts she paid the rent.

9. The Property came to light when the first mortgage holder, CitiFinancial Mortgage, filed a motion for relief from stay. The Trustee resisted this motion, as information available to the Trustee indicated that the Property had a value of approximately \$290,000.00, and that secured claims against the Property, including delinquent taxes and the first and second mortgages, amounted to less than \$210,000.00. Although a title search turned up a number of judgments against a Romie Ogbolu in Maryland, other evidence indicated these judgments were against the Debtor's father and not liens against this Property. This evidence included the fact that many of the judgments were 11 to 16 years old, and thus would have been entered when the Debtor was 14 to 19 years old. Additionally, many of the judgments were against Romie and Betty Ogbolu, which are the names of the Debtor's parents. Debtor's parents have confirmed these judgments were against them, and Debtor's father has executed an affidavit to that effect.

10. Following the motion, the Trustee began work to sell the Property. The Trustee requested title documentation on the Property from the Debtor, through his counsel. The Debtor has failed and refused to provide any title information. The Trustee obtained such information from the secured lenders and by securing a title search directly in Maryland. This process delayed the Trustee's efforts to sell the property.

11. Additionally, because the Debtor's parents were apparently receiving rent, and would not respond to the Trustee's inquiries, the Trustee initiated action to confirm the parents claimed no interest in the Property. There is a pending settlement with the Debtor's parents, notice of which has been filed with the Court, in which the parents agree they have no interest in the Property.

12. A buyer has been found for the Property as set forth in the sale motion. The price, \$355,000.00, is \$65,000.00 more than appraisal estimates in February when the motion for relief

from stay was heard. In connection with the sale, the Trustee has incurred substantial expenses, including expenses of maintaining the Property throughout the summer while no tenant occupied the Property.

13. Debtor's request for conversion of this case is accompanied by schedules which are unsigned and unverified. These schedules are also riddled with errors and omissions. These errors and omissions are so serious, and so substantial, such as omission of all of the lien holders on the Property, as to, without more, raise questions of the Debtor's good faith in filing the conversion.

14. The Debtor's delay in seeking conversion, knowing the Trustee was making efforts to sell the property and to litigate its title, is also evidence of the Debtor's bad faith in this untimely request for conversion.

15. The lack of good faith in filing a Chapter 13, including a conversion of a Chapter 7 to Chapter 13, is a basis for converting the case to Chapter 7 pursuant to 11 U.S.C. § 1307(c).

16. Debtor, by his letter or "objection" filed on October 26, 2004 and dated October 18, 2004, appears himself to be requesting this case be converted back to Chapter 7.

17. As a result of the procedures provided by Local Rule 1019-1(c) which allows for conversion of a Chapter 7 to a Chapter 13 without notice to parties in interest and without hearing, the Trustee asserts that this case was improvidently converted from Chapter 7 to Chapter 13. The Trustee asserts the Trustee should have been afforded notice and an opportunity to request a hearing on such conversion. The local rule procedure is arguably in direct conflict with Federal Rule of Bankruptcy Procedure 1017(f)(2), which requires a conversion to be on motion filed and served.

WHEREFORE, the Movants request the Court enter its order converting this case back to a Chapter 7 bankruptcy case.

Date: October 29, 2004

BEST & FLANAGAN, LLP

By /e/ Patrick B. Hennessy

Patrick B. Hennessy, Attorney No. 124412
225 South Sixth Street, Suite 4000
Minneapolis, MN 55402-4331
(612) 339-7121

Attorneys for Dwight R.J. Lindquist,
Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Bky. No. 03-47780 (RJK)

Romie Obi Ogbolu, Jr.,

Chapter 13 Case

Debtor.

AFFIDAVIT OF PATRICK B. HENNESSY

STATE OF MINNESOTA
COUNTY OF HENNEPIN

} ss

Patrick B. Hennessy, being first duly sworn, deposes and states as follows:

1. I am an attorney licensed to practice in the State of Minnesota and before the Federal Courts in this state. I represent Dwight R.J. Lindquist, the Chapter 7 Trustee in this case prior to its conversion to Chapter 13. I make this affidavit of my own personal knowledge or to introduce documents of record or received by me from the Debtor or his counsel.

2. On October 26, 2004, I received from Alan Albrecht, the attorney for the Debtor, a notice of conversion of case. Attached as Exhibit 1 is a true and correct copy of the letter I received with the documents, stamped by my office to indicate the receipt date.

3. On the same day, I received a letter from the Debtor. Attached hereto as Exhibit 2 is a true and correct copy of such letter. In the letter, the Debtor requests that his Chapter 7 case be reinstated, and for other relief. This letter was filed with the Court by Debtor.

4. At the time the Debtor filed the bankruptcy petition commencing this case, he owned real property in Montgomery County, Maryland, legally described as: “Lots numbered Twenty-One (21) to Twenty-Five (25), both inclusive, in Block lettered “N” of the subdivision of land called “CROYDEN PARK”, as the same thereof is recorded in Plat Book No. 3 at Plat 272 among the Land Records of Montgomery County, Maryland” (the “Property”). Debtor acknowledges his ownership in his letter dated October 18, 2004 (obviously drafted on or about October 22), see Exhibit 2. Debtor has also acknowledged his ownership of the property in his answer to the adversary proceeding filed by the Trustee on file with this Court and the Debtor’s response to the motion for relief from stay by CitiFinancial, which response is on file with the Court as docket entry 14 on January 8, 2004.

5. I have reviewed the schedules, filed by the Debtor in this case with his petition on November 4, 2003, and on file with the Court. Schedule A thereto, a copy of which is attached as Exhibit 3 does not list the Property. Schedule D thereof, a copy of which is attached as Exhibit 4, does not list the CitiFinancial mortgage, the holder of the first mortgage on the Property, A-K Financial, the holder of the second mortgage on the Property, Montgomery County, Maryland, to which real estate taxes on the Property were and are owed on the Property. Schedule G thereof, attached hereto as Exhibit 5, lists no executory contracts or unexpired leases, although, at the time of such filing not only was the Property leased, as more fully set forth below, but the Debtor’s real property in Minneapolis, which was scheduled, was also leased.

6. In March 2004, I spoke with a Ms. Hazel Kelley who confirmed she had leased the Property since approximately 1995. I requested that she provide copies of any rent checks she had paid since November 2003. Attached hereto as Exhibit 6 are facsimiles of checks I received from Ms. Kelley’s

financial institution in response to this request, and my letter to the Debtor's counsel requesting an accounting of this rent. I never received a response from Debtor's counsel with respect to this letter.

7. The Chapter 7 Trustee, Dwight Lindquist, has incurred substantial expense in connection with litigation to determine the ownership of the Property and in efforts to sell and clear title to the property during the period from February 2004 through the present. My firm has unbilled time in an amount in excess of \$35,000.00 and unreimbursed costs incurred in this case in the amount of \$1,033.86 to date.

8. The Trustee has also incurred, through the realtor he retained, expenses in preserving and insuring the Property, which expenses are set out in the facsimile from Art Eustace, the Trustee's realtor, attached hereto as Exhibit 7.

9. The Debtor's parents, Betty Earline Ogbolu and Romie Ogbogu Ogbolu, have acknowledged they have never held any interest in the Property pursuant to a settlement agreement which has been separately noticed by the Trustee for approval.

10. During the pendency of this bankruptcy, based upon payoff information provided by CitiFinancial and A-K Financial, as well as from the real property records of Montgomery County, Maryland, no payments have been made on the various encumbrances against this Property. The Property has been vacant since May 31, 2004. Debtor was aware, based on the stipulation resolving CitiFinancial's motion for relief from stay, and the adversary proceeding filed by the Trustee, that the Trustee was clearing title in an attempt to sell the Property. Despite this knowledge, Debtor waited to convert this case until the eve of hearing on the Trustee's motion to sell the Property, a period of over eight months. Debtor's delay, if Debtor intended to convert to a Chapter 13, was in bad faith and to the prejudice of the bankruptcy estate and creditors.

listing, only one creditor, the mortgage holder on the Debtor's property in Hennepin County, is listed as a creditor. None of the lien debts against the Property have been listed. None of the unsecured creditors listed in the original schedules have been listed. On Schedule A of the new schedules, the Debtor misrepresents his interest in the Property, asserting he owns it in tenancy in common, wherein he in fact owns it in fee simple.

12. The Debtor's Schedule J, filed at the time of his conversion, indicates his income is unchanged from his income at the time of the Chapter 7 filing.

FURTHER YOUR AFFIANT SAYETH NOT.


Patrick B. Hennessy

Subscribed and sworn to before me
this 29th day of October, 2004.


Notary Public





ALBRECHT & ASSOCIATES, LTD.

Attorney at Law

7066 Brooklyn Boulevard, Brooklyn Center, MN 55429
Office (763) 537-6251 Fax (763) 561-1561

received
10-26-04

October 25, 2004

Mr. Patrick B. Hennessy, Esq.
BEST & FLANNAGAN, LLP
225 South Sixth Street, Suite 4000
Minneapolis, MN 55402-4690

RE: Romie Ogbolu, Jr., Chapter 7
Case No.: 03-47780 (RJK)

Dear Mr. Hennessy:

Please find enclosed and herein served upon you the Conversion of Case by Debtor Conversion of Chapter 7 Case to Chapter 13 Case; Chapter 13 Plan; and Voluntary Petition with regard to the above-entitled matter.

Thank you for your attention to this matter.

Very truly yours,

Alan J. Albrecht, Esq.

AJA/ajb

enclosures

cc: Romie Ogbolu, Jr.

EXHIBIT 1

Alan J. Albrecht

The Law Firm Committed To People

10-26-04

Romie Obi Ogbolu, Jr.
5220 Lincoln Drive, Apt. 328
Edina, MN 55436
Phone: (952) 935-2583

October 18, 2004

To: Honorable Judge Robert Kressel:
U.S Bankruptcy Courts
Minneapolis, MN

Re: Romie Obi Ogbolu, Case # 03-47780

Your honor:

I know this letter may be unusual, but I am writing because I am confused and do not know which way to turn because:

1. I cannot get cooperation, truth and proper representation from my attorney, Allan Albrecht. Alan has persistently deceived me, and had failed to carry out my wishes, which is to petition for conversion of my bankruptcy petition from Chapter 7 to Chapter 13 to enable me protect and keep my home.
2. Although, I asked Alan, since June 2, 2004 of this year to petition for the conversion, it appears he had failed to do so, consequently the Trustee is proceeding to sell my property under chapter 7.
3. On Monday, 10/18/04, Alan sent me a Chapter 13 filing document to sign. I signed it and returned the document to him the same day. When I called the Bankruptcy court on Friday, 10/22/04 to verify the filing, I was told that my case had been discharged on Thursday, 10/21/04 and that there was no Chapter 13 filing on the record. I called Alan seeking explanation; he told me he would call me back. My father, who recommended Alan's services, also called him and asked why, and what happened. He promised to call back to explain. He neither called my father back nor me.
4. Because of Alan's neglect of my request, and poor attention to my needs, I am now faced with the following dilemma:
 - a. Because of the discharge, I fear the Trustee will sell my home at 210 Woodland Rd, Rockville, Md. without giving me an opportunity to contest the sale and protect my property.

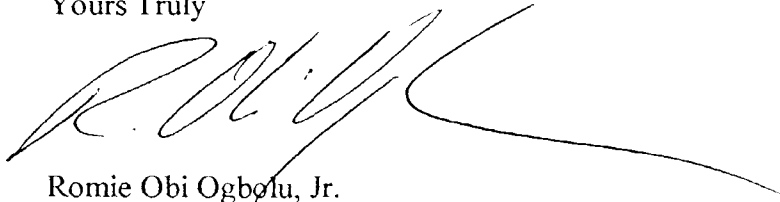
EXHIBIT 2

I respectfully pray to you for the following:

- a. Re instate my current Chapter 7, to allow me sufficient time to petition for conversion to Chapter 13.
- b. Stop the sale of my property, until I am able to get an attorney, who can adequately represent my interest, and also follow the proper procedures required on this matter.

Thank you, while I remain

Yours Truly

A handwritten signature in black ink, appearing to read 'Romie Obi Ogbolu, Jr.', with a long, sweeping horizontal line extending to the right.

Romie Obi Ogbolu, Jr.

Cc: Dwight Lindquist, Esq. Trustee
Alan J. Albrecht, Attorney at Law
Patrick B. Hennessy, Attorney at Law

In re Romie Obi Ogbolu, Jr.
Debtor

Case No. _____
(If known)

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
Duplex 2212 Glenwood Avenue Minneapolis, MN 55405			142,000	110,000

Total ► 142,000
(Report also on Summary of Schedules.)

EXHIBIT 3

In re Romie Obi Ogbolu, Jr.
Debtor

Case No. _____
(If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and account number, if any, of all entities holding claims secured by property of the debtor as of the date of filing of the petition. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 12319075 Ameriquest P.O. Box 11000 Santa Ana, CA 92711-1000			6-1996 VALUES 142,000		X		110,000	
ACCOUNT NO.			VALUES					
ACCOUNT NO. JTA430F Ford Motor Credit P.O. Box 3076 Columbia, MD 21045			VALUES 10,000		X		10,000	
ACCOUNT NO. 56423 Atlantic Adjustment P.O. Box 16038 Philadelphia, PA 19114			2-24-2003 1996 Nissan Sentra VALUES				5,000	

continuation sheets attached

Subtotal (Total of this page) \$ 125,000
Total (Use only on last page) \$ 125,000
(Report total also on Summary of Schedules)

260
(1009)

In re Romie Obi Ogbolu, Jr.
Debtor

Case No. _____
(if known)

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests.

State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease.

Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

☒ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.

BEST & FLANAGAN LLP
ATTORNEYS AT LAW

225 South Sixth Street, Suite 4000
Minneapolis, Minnesota 55402-4690
Telephone 612 339 7121
Facsimile 612 339 5897
www.bestlaw.com



Direct Dial: (612) 349-5645
Email: phennessy@bestlaw.com

April 9, 2004

Mr. Alan J. Albrecht
Albrecht & Associates, Ltd.
7066 Brooklyn Boulevard
Brooklyn Center, MN 55429

RE: Romie Obi Ogbolu, Jr.
Bankruptcy Case No. 03-47780 (RJK)

Dear Mr. Albrecht:

Enclosed please find copies of the tenant's checks showing that she has been paying Betty Ogbolu during the bankruptcy. We request that the debtor confirm that he has not authorized Betty to collect the rent, in writing, that we can provide to the tenant. We also request that he request Betty to surrender the rent and confirm that he has made that request and advise us as to whether or not she refuses. If she refuses, we request he provide a current address for her. I will then make demand directly on her.

The Trustee considers the debtor complicit in his mother's taking of these rent payments, as the debtor failed and refused the Trustee's request for information regarding the name of any tenant or whether the property was occupied. This failure and refusal, which delayed the Trustee's obtaining knowledge of the tenant, facilitated his mother's conversion of these rent monies. If legal action is required to recover them, the Trustee will consider his remedies against the debtor as well as the debtor's mother.

I'm in the process of preparing motions for Rule 2004 examinations of the debtor and his parents. These can be obviated by debtor's and his parents' full response to the information we have requested.

Very truly yours,

Patrick B. Hennessy

PBH:kjd
Enclosures
cc Dwight Lindquist

Leonard M. Addington
N. Walter Graff
Allen D. Barnard
Frank Vogel
Marinus W. Van Putten, Jr.
Morris E. Knopf
John A. Burton, Jr.
James C. Diracles
Roger R. Roe, Jr.
Diane L. Paulson
Robert L. Meller, Jr.
Judith A. Rogosheske
Scott D. Eller
Charles C. Benquist
James M. Christensen
L. Joseph LaFave
Gregory D. Sunde
Cathy E. Gordin
Patrick B. Hennessy
Timothy A. Sullivan
Daniel R.W. Nelson
David J. Zubke
Steven R. Kruger
Paul E. Kaminski
Russ C. Farnell
Garvin S. Glover
Mary E. Shearer
Barbara M. Ross
Catherine J. Courtney
Sarah Crippen-Madison
Robert D. Maher
David H. Johnson
Christopher D. Johnson
Jill R. Laon
Daniel A. Kaplan
Lenor A. Scheffler
Bradley E. Williams
Cynthia L. Hegarty
Michael B. Wacker
David C. Murphy
Hazel J. Uy
Glenda S. Struthers
Brian C. Eddy
Rebecca A. Chaffee
Thomas G. Garry
David G. Schelzel
Daniel L. Grimsnel
Nancy J. Kruttsch
John D. Seimer

OF COUNSEL
John R. Carroll
Robert L. Croshy
Richard A. Peterson
Scott P. Moen
Michael H. Pink

James L. Best
1962-1966
Robert J. Flanagan
1963-1971

FOUNDED 1926

003828/240002/296352 1

EXHIBIT 6

Navy Federal Credit Union

P.O. Box 3000 Merrifield VA 22119-3000

Number of pages sent 7 (including this page)

ATTENTION TO: PATRICK B HENNESSY

Fax Number: 916123395897

SENT BY: TRANSACTION RESEARCH SECTION

Date: Thursday, April 08, 2004 Time: 09:21:39 AM

LEON SHAW
HAZEL NAHRIS KELLEY
776
65-1432/1100

Pay to the order of *Pat B Hennessy* \$ *200.00*
Two Hundred Red Dollars

Serial # *003924563426*

NOV 13 2003 *Pat B Hennessy*

⑆256074974⑆0776⑆2214106706⑆001⑆0000020000⑆

43749

0717000132

0717000132

0717000132

0717000132

LEON SHAW
PATRICK B HENNESSY

Account No. 2214106706
LEON SHAW

Draft No. 0776 Roll 02835
Paid Date 11/07/2003
Trace No. 0051050968 Transcode 220

Fax/Phone# 6123395897
Employee No. 17966
004

Work Type 07
STC

800

80-2157 2500

By *Leon Shaw*

Patrick B Hennessy

Account No. 2214106706

Roll 00090

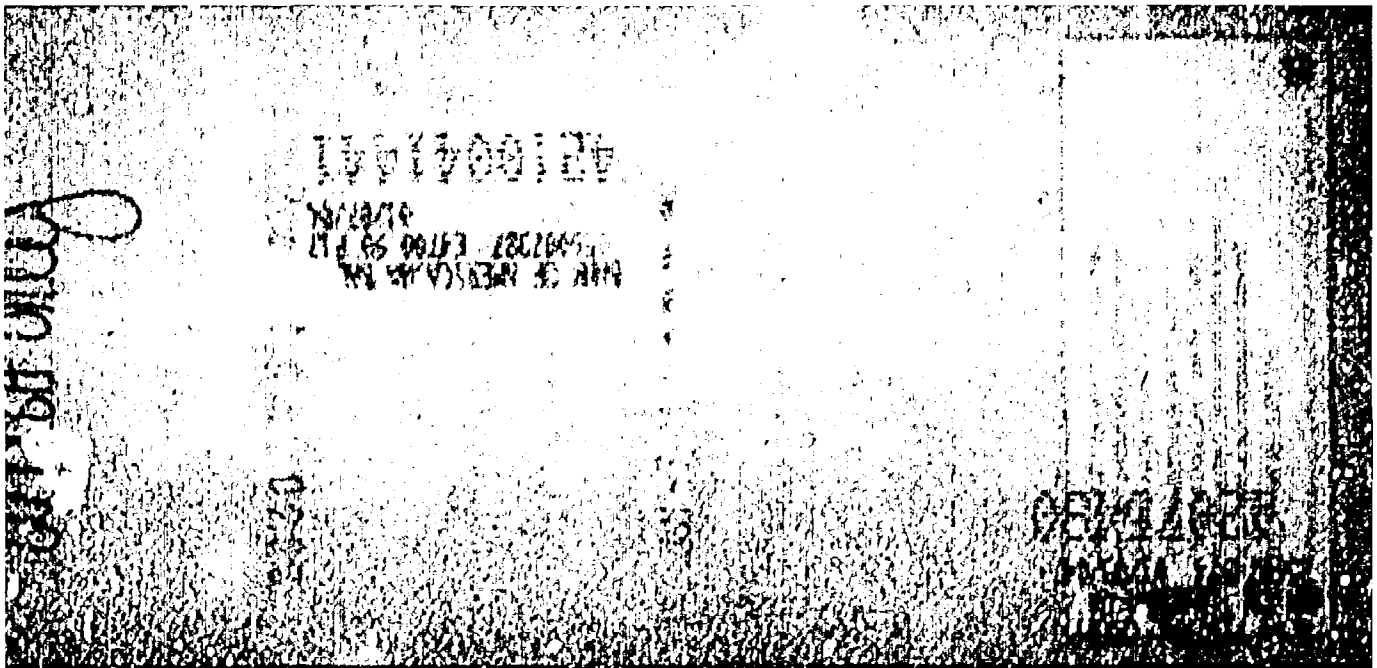
Transcode 220

Work Type 07

STC

004

15607499410600-22141067060001 0000060200



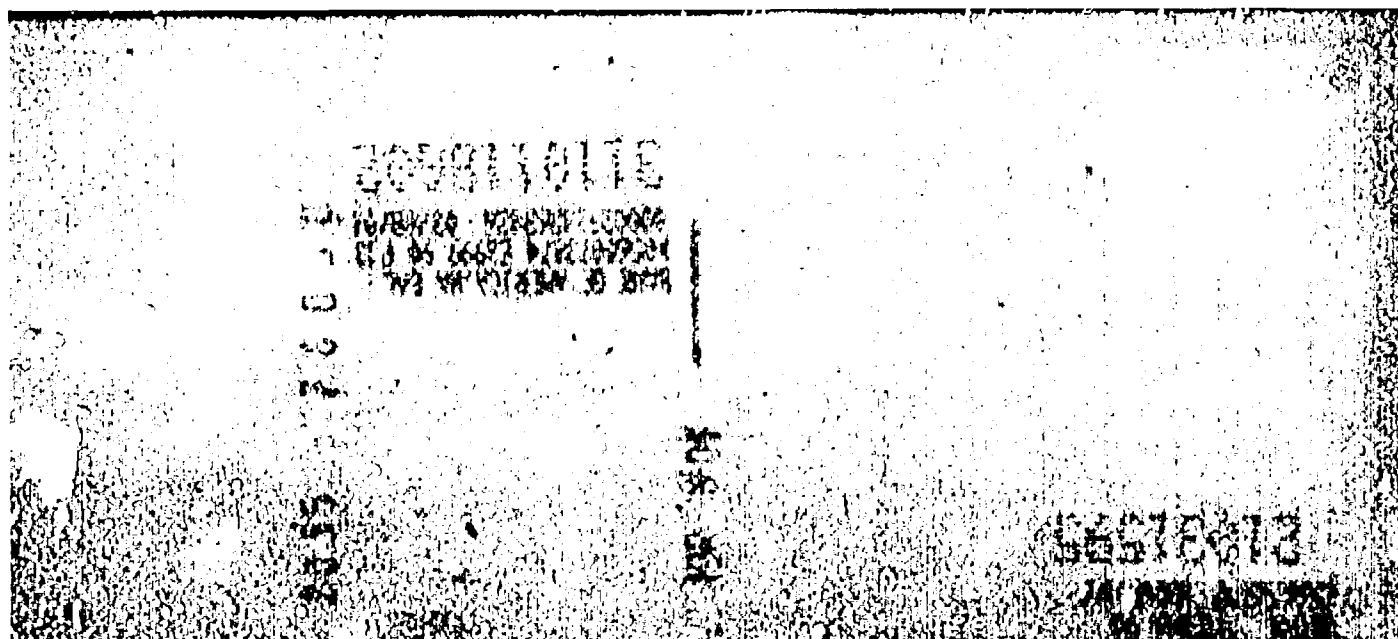
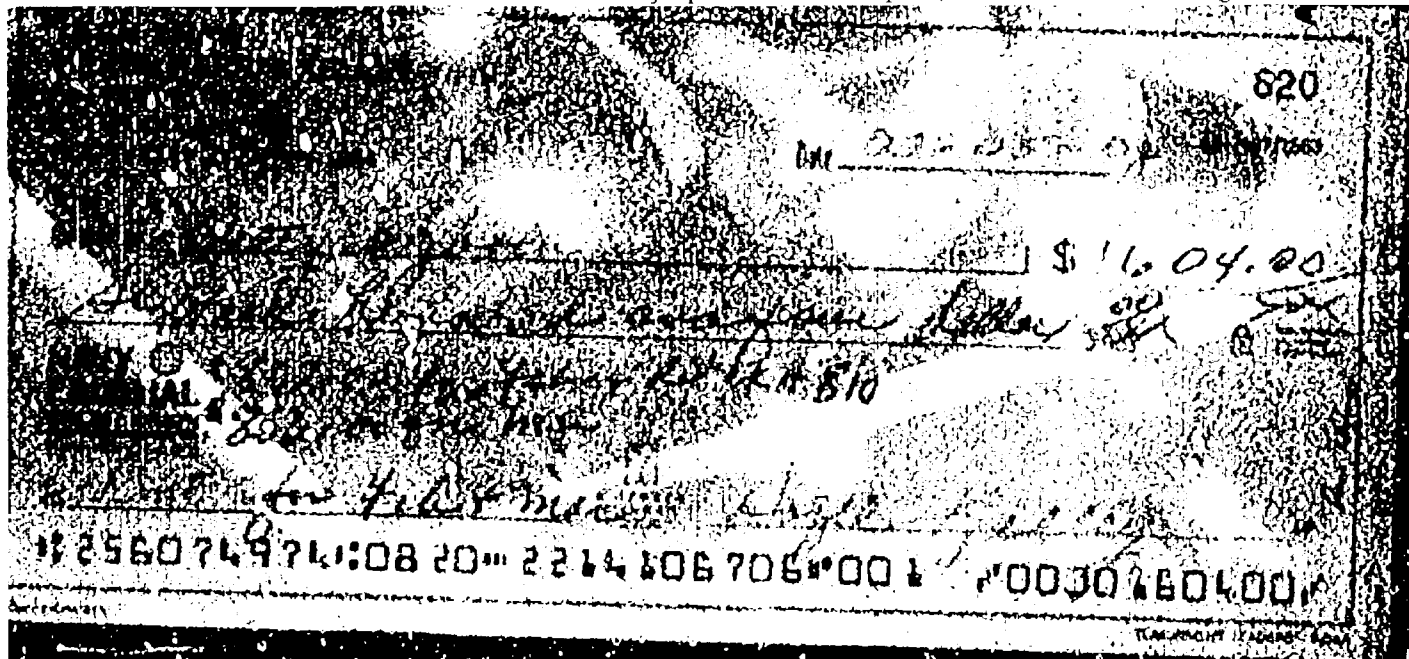
LEON SHAW
PATRICK B HENNESSY

Account No. 2214106706
LEON SHAW

Draft No.	0800	Roll	00090
Paid Date	01/08/2004		
Trace No.	0042075480	Transcode	220

Fax/Phone# 6123395897
Employee No. 17966
004

Work Type 07
STC



LEON SHAW
PATRICK B HENNESSY

Account No. 2214106706

LEON SHAW

Draft No. 0820

Roll 00604

Paid Date 03/09/2004

Trace No. 0021031595

Transcode 220

Fax/Phone# 6123395897

Work Type 07

Employee No. 17966

STC

004



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(800) 845-5048

Fax: 301-963-1071

FAX FACTS

DATE: 10-7-04

TO: Pat Hennessey

FROM: Art Eustace

Fax Number: 612 339 5897

RE: 210 WOODLAND RD - OGBOLLY

Number of Pages Including This Page: 4

Comments: Here are the receipts for
expenses for 210 woodland.

Travelers (Hazard Ins)	94 ⁵⁰	paid by VISA
	189 ⁰⁰	paid by check
Danscapes (trash removal)	- 238 ⁰⁰	
Olive Tree (lawn maint)	- 250 ⁰⁰	
TOTAL	- 771.58	



Each Office is Independently Owned & Operated



Oct-07-04 11:30

From-CENTURY

Village Realty

3018631071

T-397 P.002/004 F-425

CENTURY 21 Village Realty

SUNSHINE VALLEY BANK

05/31/2004

5425 STEWARTOWN ROAD - SPOT - MD

DANIELSBERG, MD

GAUCHERSS 4000 WAREHANG 20829-1459

301-138-5530

05/31/2004

PAY

TO THE

ORDER OF

Travelers Indemnity

\$ 189.00

One Hundred Eighty Nine and 00/100

DOLLARS

Travelers Indemnity

Reimburse Center

One Four of Square

Hartford, CT 06183-1001

VOID AFTER 90 DAYS

MEMO

AUTHORIZED SIGNATURE

"005532" :055001384: 0006140963"

CENTURY 21 Village Realty

5532

Travelers Indemnity
Insurance

05/31/2004

189.00

PASE

WEBBLAND

#1411750 Confirmation of 94⁵⁰ payment (VISA)
by telephone - Yolanda Page
Section D314

PV Checking

189.00

CENTURY 21 Village Realty

5532

Travelers Indemnity
Insurance

05/31/2004

189.00

PV Checking

189.00

FOOTNOTES

USE WITH 8229 ENVELOPE

NEBS To Order: 1-800-225-4360 or www.nebs.com

PRINTED IN U.S.A.

INVOICE

Danscapes

1315 Mulberry Court • Frederick, MD 21703 • 301 919-7820 • 301 620-0214

Century 21-Village Realty
C/O Art Eustace -- Agent
9426 Stewartown Road
Gaithersburg, Md. 20879

July 12, 2004

Re: For Sale Property -- 210 Woodland Drive, Rockville, Md. 20850

Collect, amass, and dispose of 1.150 lbs of debris from interior and exterior of premises, to county run transfer station.

Transfer station fees:	\$28.08
Labor	210.00
Total Amount due	\$238.08

Please make check payable to: *Daniel J. Gluck*

Thank You

**Olive Tree Landscape & Design**

18315 Swan Stream Drive

Gaithersburg, MD. 20877.

301-221-5912

e-mail- otlandscape@aol.com

Invoice**BILL TO**

Century 21- Art

9426 Stewartown Road Suite 3A

Gaithersburg, Md. 20879-1453

CUSTOMER NO.	113
INVOICE NO.	713
INVOICE DATE	10/1/04
DUE DATE / TERMS	Upon Receipt
AMOUNT DUE	\$250.00

DATE	DESCRIPTION	AMOUNT
	Balance Forward	\$0.00
7/2/04	Lawn cutting	\$120.00
	Turf cut, perimeter trimmed, all walkways, pathways blown clean of trimmings	
7/21/04	Lawn cutting	\$65.00
	Turf cut, perimeter trimmed, all walkways, pathways blown clean of trimmings	
8/25/04	Lawn cutting	\$65.00
	Turf cut, perimeter trimmed, all walkways, pathways blown clean of trimmings	
	Total for Invoice #713	\$250.00
	AMOUNT DUE	\$250.00
	A \$5.00 late fee will be applied if payment is not received within 15 days of receipt of invoice	
Current		31-60 Days
61-90 Days		Over 90 Days
\$250.00		\$0.00
\$0.00		\$0.00
\$0.00		\$0.00
\$0.00		\$0.00

PLEASE DETACH AND RETURN WITH YOUR PAYMENT.

If payment has been made, thank you, please disregard. If not, payment must be made immediately to avoid suspension of service. Please send payment, including current charges, in the enclosed envelope.

Invoice No.	713
Customer	#113 Century 21- Art
Amount Due	\$250.00
Payment	\$

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Bky. No. 03-47780 (RJK)

Romie Obi Ogbolu, Jr.,

Chapter 13 Case

Debtor.

**MEMORANDUM IN SUPPORT
OF MOTION TO CONVERT CASE TO CHAPTER 7**

Dwight R.J. Lindquist, the duly-appointed Chapter 7 Trustee in this case prior to conversion of the case this week and Best & Flanagan LLP, an administrative claimant (collectively, the “Movants”) have moved the Court for an order converting this case to Chapter 7. The Movants submit this memorandum in support of their motion.

The facts are set forth in the Notice of Hearing and Motion.

The Movants believe that the conversion of this case to a Chapter 7 case is in the best interests of the creditors and the bankruptcy estate and that cause exists under 11 U.S.C. § 1307(c) to order such conversion.

INTRODUCTION AND CASE BACKGROUND

This case was originally filed as a Chapter 7 case on November 4, 2003. Debtor filed the case pro se. Several weeks later, in November 2003, CitiFinancial Mortgage Company, Inc. filed a motion for relief from stay. This motion, by a creditor not listed by the Debtor, involved real property in Montgomery County, Maryland, which was also not scheduled by the Debtor. The Trustee requested documentation from the Debtor regarding the Debtor’s interest in this property and the debtor failed to respond with any documentation. The Trustee obtained title

work with respect to the property from the moving creditor, records in Montgomery County, Maryland and eventually from the second mortgage holder, and determined, based in part on the first mortgage company's stated balance owing, that the property appeared to have substantial equity beyond the liens against it. The Trustee opposed relief from stay and an agreement was entered into in January 2004, to which the Debtor, through his then counsel, Allan Albrecht, agreed, confirming the Debtor owned the property and providing the stay would be denied until January 2005 pending the Trustee's sale or abandonment of the property. The Trustee has worked gathering documentation regarding the property, obtaining title work, identifying and quantifying the liens against the property, and retaining a realtor to sell it. The Trustee also initiated an action to determine title, as it came to the Trustee's attention that the tenant in the property claimed to be making rent payments to the Debtor's parents. The Trustee initiated the adversary proceeding to determine title, naming amongst other parties, the Debtor.

All of these actions culminated in the Trustee obtaining a purchase offer which has been noticed for sale for a purchase price of \$355,000.00, approximately \$65,000.00 more than the appraised value available to the Trustee in January 2004. The Trustee has also obtained default judgment with respect to a number of entities holding judgments, which judgments were against Debtor's father rather than Debtor, and has reached agreement with the Debtor's parents that they hold no interest in the property and that the judgments which appear of record in Maryland are against them and not the Debtor. Settlement with the Debtor's parents has also been noticed for Court approval.

The Debtor waited through the entire time the Trustee was undertaking these efforts without any action to convert the case. During this time, interest has continued to accrue on the

mortgage debt against the property without payment and an additional year of real estate taxes have accrued.

On the eve of the Trustee's hearing to approve a sale of the property, Debtor filed a conversion of the case. The schedules filed by the Debtor with the conversion, not signed, are riddled with errors, much like the schedules filed when the case was originally filed. Debtor in his Schedules I and J filed with the conversion shows no change in the Debtor's circumstances with respect to income. Debtor has filed an "objection" to the sale, which could also be construed as a request to have the case converted back to a Chapter 7, in which the Debtor falsely alleges that the Maryland property is his "home."

ARGUMENT

I. This Court should order this case converted back to Chapter 7 for cause.

Substantial cause exists to convert this case back to Chapter 7. The Debtor's lack of good faith is clear by both his actions and his inactions. Debtor has failed to accurately list his property and his debts in his schedules. The Debtor has failed to perform his obligations as a debtor during the Chapter 7 to cooperate in providing information to the Trustee necessary to liquidate property of the estate. Debtor has deliberately delayed any action to convert this case, until facing the sale of the property he failed to disclose initially. Debtor has waited a year since the filing of this case, knowing the Trustee was expending substantial time, effort and money to liquidate the property, all the while making no attempt to convert the case until facing sale of the property. Debtor is clearly attempting to manipulate the bankruptcy code seeking conversion to Chapter 13 when his failure to hide his interests in the property from the Trustee failed to protect the property from liquidation.

A. LEGAL STANDARD FOR CONVERSION TO A CHAPTER 7

The Movants' motion is brought under 11 U.S.C. §1307(c), which provides, in relevant part:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under Chapter 7 of this title ... for cause.

Lack of good faith in filing constitutes cause for purposes of 11 U.S.C. §1307(c). In re Buchanan, 225 B.R. 672, 673 (Bankr.D.Minn.1998), affirmed Buchanan v. United States of America, 1999 WL 314819 at *4 (D.Minn.), citing In re Belden, 144 B.R. 1010, 1019 n.17 (Bankr.D.Minn.1992); accord Molitor v. Eidson, 76 F.3d 218, 220 (8th Cir.1996). In determining whether a debtor has acted in good faith, courts in the Eighth Circuit have applied a totality of the circumstances test, with the following factors earmarked for particular attention:

(1) The debtor's accuracy in stating his debts and expenses; (2) the debtor's honesty in the bankruptcy process, including whether he has attempted to mislead the court and whether he has made any fraudulent misrepresentations in the matter of his bankruptcy; (3) whether the Code is being unfairly manipulated; (4) the type of debt sought to be discharged; (5) whether the debt would be nondischargeable under Chapter 7; and (6) the debtor's motivation and sincerity in seeking Chapter 13 relief.

In re Buchanan, 225 B.R. at 674, citing Handeen v. LeMaire, 898 F.2d 1346, 1350 (8th Cir.1990)(en banc).

Cause exists under Parts 1, 2, 3 and 6 of this test. Debtor has shown little if any concern for the accuracy of his schedules, or even in correcting these inaccuracies by amendments when the Debtor's omissions have been revealed. It is difficult to imagine that the Debtor could have "forgot" his most valuable asset when he prepared his original schedules, or the substantial mortgage debts related to such property. Debtor has also shown no indication of a true desire to reorganize through Chapter 13. If he wished to save the Maryland property, why did he not originally schedule it, and why did he not convert to 13 promptly. Instead, he has allowed

almost a year of post-petition payments to accrue on each of the mortgages on the property, plus a year of post-petition real estate taxes, while either the Debtor or others siphoned off the rents, at least through March of last year when the Trustee discovered the property was occupied. Debtor's bad faith is evidenced by the continued gross inaccuracies in the schedules filed with his notice of conversion. It is evidenced by the Debtor's complete lack of cooperation with the Chapter 7 Trustee to facilitate the sale of the Maryland property and by his failure to seek Chapter 13 relief prior to the Trustee incurring substantial expenses to accomplish the liquidation of this property. Clear grounds exist to convert the case.

In addition, the Trustee points out that, because of an apparent conflict between Local Rules and the Federal Rules of Bankruptcy Procedure, which allowed this case to be converted without notice to the Trustee and opportunity for hearing, this case was improvidently converted in the first place.

B. TRUSTEE'S RIGHT TO NOTICE AND HEARING PRIOR TO CONVERSION

This Case was converted from a Chapter 7 case to a Chapter 13 case pursuant to Debtor's request under 11 U.S.C. §706, which provides, in relevant part:

(a) The debtor may convert a case under this chapter to a case under Chapter 11, 12 or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title.

In this District, the conversion from Chapter 7 to Chapter 13 is granted automatically, without notice or hearing, pursuant to Local Rule 1019-1(c), which provides, in relevant part:

CONVERSION TO CHAPTER 12 OR 13 FROM CHAPTER 7. If conversion is allowed under §706(a) of the Code, the debtor may convert a Chapter 7 case to a Chapter 12 or 13 case by filing an original and three copies of a verified conversion adapted from Local Form 1019-1. The conversion shall be accompanied by an original and three copies of the exhibits, attachments, schedules, statements and lists appropriate for a Chapter 12 or 13 case.

The practice of granting s debtor's request for conversion from Chapter 7 to Chapter 13 on application, without requiring notice or a hearing appears to be inconsistent with the language of Bankruptcy Rule 1017(f)(2). This rule, entitled "Procedure for Dismissal, Conversion, or Suspension", provides, in relevant part:

(2) Conversion or dismissal under section 706(a), 1112(a), 1208(b), or 1307(b) shall be on motion filed and served as required by Rule 9013.

Many courts have read the language of 706(a), in conjunction with the Rule 1017(f) hearing requirement, as permitting or requiring a court to examine the facts of the case before granting the requested conversion:

"The very first words of section 706(a) - the debtor may convert a case - are in the nature of the permissive. In addition, why must the debtor seek conversion by motion if not to attempt by persuasion to move a court to so permit? Since a motion must be made and approved by the Court then a court must consider in its decision to permit or deny the possibility of abuse; prejudice to other parties or creditors; the eligibility to be a Debtor under the converted section of the Code; and all the circumstances generally. The statutory language clearly states that the Debtor may convert his case, but does not state that he or the Court 'shall' honor his request."

In re Markakis, 254 B.R. 77, 82 (Bankr.E.D.N.Y.2000)(internal quotation marks omitted), see also, e.g., In re Sully, 223, B.R. 582, 585 (Bankr.M.D.Fla.1998) (denying conversion where debtor settled lawsuit that was property of estate and moved to convert when trustee discovered settlement); Enterprise Nat'l Bank v. Stutzman, 191 B.R. 925, 927 (Bankr.M.D.Fla.1995) (denying conversion motion by debtors where debtors committed fraud and showed no likelihood of rehabilitation under Chapter 11); In re Jeffrey, 176 B.R. 4, 6 (Bankr.D.Mass.1994) (denying debtors' motion to convert for abuse of process when debtors had received Chapter 7 discharge without disclosing valuable tort claim).

Other courts have reached the opposite conclusion, finding that the wording of § 706(a) creates an absolute right to convert to Chapter 13 at any time. Street v. Lawson, 55 B.R. 763,

765 (9th Cir. BAP 1985) (holding court has no discretion to deny debtor's right to convert).

In In re Johnson, 262 B.R. 75, 79 (Bankr.E.D.Ark.2001), the Court, after a lengthy discussion of the contradictory authorities on this issue, concluded that:

“The bankruptcy court possesses inherent equitable powers to protect the process when the debtor attempts to convert to a reorganization chapter for an improper purpose. Therefore, conversion from Chapter 7 to 13 may be denied for lack of good faith as an abuse of process.”

Id., Quoting In re Sully, 223 B.R. 582, 584 (Bankr.M.D.Fla.1998) (internal quotation marks omitted). This view is consistent with an unpublished affirmation by the Eighth Circuit Court of Appeals of a district court decision to deny a debtor's motion to convert from Chapter 7 to Chapter 13 because of the debtor's bad faith. Martin v. Cox, 213 B.R. 571 (E.D.Ark.1996), *aff'd per curiam*, 116 F.3d 480 (8th Cir.1997) (unpublished table opinion). While an unpublished opinion is not precedent, it does have persuasive value in limited circumstances. 8th Cir. R. 28A(i).

Movants believe the Local Rule should be reexamined, at least in the context of conversion from a Chapter 7 to a Chapter 13 case. If “cause” exists, to deny such a conversion, the Chapter 7 Trustee is most clearly in the best position to evaluate and raise this objection. It is often the actions of the Chapter 7 Trustee, in successfully finding or seeking to liquidate assets of a debtor, that lead to debtors conversions or attempted conversions which are later found to be in bad faith. Had the Chapter 7 Trustee been given notice of the Debtor's intent to convert this case, he would have raised the same arguments set forth herein as a basis of denying such motion.

CONCLUSION

For the foregoing reasons, the Movants respectfully request that the Court grant their motion and convert this case back to Chapter 7. It is the Movants' belief that conversion of the case is in the best interest of the creditors and the bankruptcy estate.

Date: October 29, 2004

BEST & FLANAGAN LLP

By /e/ Patrick B. Hennessy

Patrick B. Hennessy
Atty. Registration No. 124412
Attorneys for Dwight R.J. Lindquist,
Chapter 7 Trustee
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Bky. No. 03-47780 (RJK)

Romie Obi Ogbolu, Jr.,

Chapter 13 Case

Debtor.

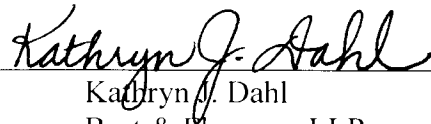
**DECLARATION REGARDING ELECTRONIC FILING AND
UNSWORN CERTIFICATE OF SERVICE**

I, Kathryn J. Dahl, declare under penalty of perjury that on October 29, 2004, I mailed copies of the Notice of Hearing and Motion for Limited Notice and Expedited Hearing on Trustee's Motion to Convert Case to Chapter 7, proposed Order, Notice of Hearing and Motion to Convert Case to Chapter 7, Memorandum of Law, Affidavit of Patrick B. Hennessy and proposed Order, which documents were electronically filed on October 29, 2004, by first class mail postage prepaid and, where indicated on the attached list, by facsimile, to each entity named on the attached service list at the address and/or facsimile number stated therein.

I will scan the original of this Declaration and save it in PDF format and understand it will be inserted into the electronic submission of the motion. I consent to this Declaration being electronically filed with the United States Bankruptcy Court. Best & Flanagan LLP will retain the original of this unsworn declaration in its file for 2 years.

Executed on: October 29, 2004.

Signed: _____



Kathryn J. Dahl
Best & Flanagan LLP
225 South Sixth Street, Suite 4000
Minneapolis, MN 55402

SERVICE LIST

RE: Romie Obi Ogbolu, Jr.
Bankruptcy Case No. 03-47780 (RJK)

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Edina, MN 55436
By Mail

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Brooklyn Center, MN 55429
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Minneapolis, MN 55402
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Office of the U.S. Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
By Mail and Facsimile (612) 664-5516

CitiFinancial Mortgage Company, Inc.
c/o Steven H. Bruns
Peterson Fram & Bergman, P.A.
50 East 5th Street, Suite 300
St. Paul, MN 55101
By Mail and Facsimile (651) 228-1753

Capital Asset Research Corporation Ltd.
Attn: George Gunderson, Vice President
3960 RCA Boulevard, Suite 6002
Palm Beach Gardens, FL 33410-4289
By Facsimile (561) 776-5010

Wells Fargo Bank, N.A.
Loss Recovery Center
PO Box 30095
Walnut Creek, CA 94598
By Mail

Ameriquet
P.O. Box 1100
Santa Anna, CA 92711-1000
By Mail

Nancy Nordmeyer
Shapiro & Nordmeyer, LLP
7300 Metro Boulevard, Suite 390
Edina, MN 55439-2306
By Mail and Facsimile (952) 831-4734

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Bky. No. 03-47780 (RJK)

Romie Obi Ogbolu, Jr.,

Chapter 13 Case

Debtor.

ORDER

This matter came on for hearing on November 3, 2004 on the motion of the Chapter 7 Trustee in this case prior to conversion, Dwight R. J. Lindquist, and of Best & Flanagan LLP, counsel to such Trustee and an administrative claimant (collectively, the "Movants") for conversion of this case to Chapter 7. Appearances were noted on the record. Counsel were heard.

NOW, THEREFORE, based upon the Movants' motion, memorandum, supporting affidavit and all of the files and records herein, and the arguments of counsel, and this Court's findings of fact and conclusions of law, if any, having been set forth on the record,

IT IS HEREBY ORDERED that pursuant to 11 U.S.C. § 1307(c), this case is converted from a Chapter 13 case to a Chapter 7 case.

Date: November _____, 2004

Robert J. Kressel
U.S. Bankruptcy Judge